

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: OCT 08 2014

DAVID HOWARD ZIMMER

(List the full name(s) of the plaintiff(s)/petitioner(s).)

10 CV 4146 (VB)( )

-against-

NOTICE OF APPEAL

DANIEL BOYD MORRIS

LUCILLE AIOGA MORRIS

(List the full name(s) of the defendant(s)/respondent(s).)

Notice is hereby given that the following parties: DAVID HOWARD

ZIMMER

(list the names of all parties who are filing an appeal)

in the above-named case appeal to the United States Court of Appeals for the Second Circuit

from the ☒ judgment ☒ order entered on: 6/5/14 : 6/9/14  
(date that judgment or order was entered on docket)

that:

AMOUNT OF JUDGMENT, INTEREST AND PUNITIVE

DAMAGES IS INCORRECT

(If the appeal is from an order, provide a brief description above of the decision in the order.)

10/6/14

Dated

Signature

DAVID H. ZIMMER

Name (Last, First, MI)

96 LINWOOD PLAZA, 208, FORT LEE, NJ 07024

Address

City

State

Zip Code

917-488-5371

Telephone Number

E-mail Address (if available)

\* Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
DANIEL PETER MORRIS and LUCILLE  
AIOSA MORRIS,

Plaintiffs,

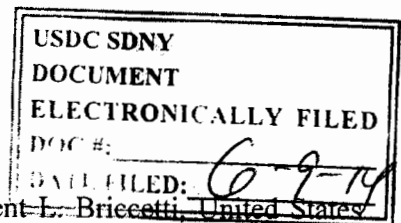
10 CV 4146 (VB)

-against-

**JUDGMENT**

DAVID HOWARD ZIMMER, CHARLES L.  
WILKINSON, III, SHERRY ZIMMER,  
DEBORA ZIMMER, and DAVID M. ZIMMER,  
Defendants.

-----X



This matter having been assigned to the Honorable Vincent L. Briccetti, United States District Judge, and the matter having been referred for general pretrial supervision and consideration of dispositive motions to the Honorable Lisa M. Smith, United States Magistrate Judge (Doc. #171), and Judge Smith having issued a Report and Recommendation on the parties' cross-motions for summary judgment (Doc. #384), and Judge Briccetti having adopted the Report and Recommendation (Doc. #394), finding defendant David Howard Zimmer liable to plaintiffs on all claims and concluding plaintiffs are entitled to an award of \$67,625 in compensatory damages plus prejudgment interest of 9% per annum from July 21, 2004, and post-judgment interest at the rate provided for in 28 U.S.C. § 1961, and dismissing all other defendants from the case, and thereafter, a bench trial before Judge Briccetti on the issue of punitive damages having been held on June 4 and June 5, 2014, and at the conclusion of the trial, on June 5, 2014, the Court having rendered a verdict in favor of plaintiffs as against defendant David Howard Zimmer and awarding plaintiffs \$25,000 in punitive damages, and the Court also having modified its award of prejudgment interest for the reasons set forth on the record, it is hereby,

**ORDERED, ADJUDGED AND DECREED:**

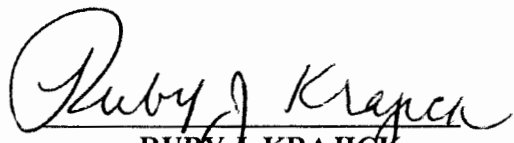
1. Plaintiffs are entitled to a monetary award of \$92,625 in compensatory and punitive damages, and
2. Plaintiffs are entitled to prejudgment interest on \$83,625 at the rate of 9% per annum, to accrue from July 21, 2004 to May 21, 2010, in the amount of \$43,920.31, and
3. Plaintiffs are entitled to prejudgment interest on \$77,625 at the rate of 9% per annum, to accrue from May 21, 2010 to February 21, 2012, in the amount of \$12,269.00, and
4. Plaintiffs are entitled to prejudgment interest on \$67,625 at the rate of 9% per annum, to accrue from February 21, 2012 to June 9, 2014, in the amount of \$13,990.04, and
5. Plaintiffs are therefore entitled to a combined monetary award from items 1 through 4 above of \$162,804.35, and a Judgment in that amount is entered in favor of plaintiffs Daniel Peter Morris and Lucille Aiosa Morris and against defendant David Howard Zimmer, and
6. Plaintiffs are entitled to post-judgment interest on the combined monetary award of \$162,804.35, at the rate provided for in 28 U.S.C. § 1961, to accrue from June 9, 2014, and
7. Plaintiffs' claims are dismissed as against defendants Charles L. Wilkinson III, Sherry Zimmer, Debora Zimmer, and David M. Zimmer, and all cross-claims and counterclaims asserted herein are also dismissed.

Dated: White Plains, New York  
June 9, 2014

So Ordered:



**HON. VINCENT L. BRICCETTI**  
United States District Judge



**RUBY J. KRAJICK**  
Clerk of Court

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DANIEL PETER MORRIS, and  
LUCILLE AIOSA MORRIS,  
Plaintiffs,

V.

DAVID HOWARD ZIMMER, CHARLES L.  
WILKINSON, III, SHERRY ZIMMER,  
DEBORA ZIMMER, and DAVID M. ZIMMER,  
Defendants.

## ORDER

10 CV 4146 (VB)


For the reasons set forth on the record today, the Court awards \$25,000 in punitive damages in favor of plaintiffs and against defendant David H. Zimmer.

The Court will prepare and docket a judgment accordingly.

Dated: June 5, 2014  
White Plains, NY

SO ORDERED:

SO ORDERED:



Vincent L. Briccetti  
United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DAVID PETER MARIS

Lowell Glosa Morris

(List the full name(s) of the plaintiff(s)/petitioner(s).)

10 CV 4146 (VB)( )

-against-

David Howard Zimmer

**MOTION FOR EXTENSION  
OF TIME TO FILE NOTICE  
OF APPEAL**

(List the full name(s) of the defendant(s)/respondent(s).)

I move under Rule 4(a)(5) of the Federal Rules of Appellate Procedure for an extension of time to file a notice of appeal in this action. I would like to appeal the judgment entered in this action on 10/6/14 but did not file a notice of appearance within the required time period because:

I sent notice to wrong court (see attached)

(Explain here the excusable neglect or good cause that led to your failure to file a timely notice of appeal.)

10/6/14

Dated:

Signature

DAVID H. Zimmer

Name (Last, First, MI)

96 Linwood Plaza, 208) East Lee, NJ 07024

Address

City

State

Zip Code

917-488-5377

Telephone Number

E-mail Address (if available)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DAVID HOWARD ZIMMER

(List the full name(s) of the plaintiff(s)/petitioner(s).)

10 CV 4146 (VB) ( )

-against-

**MOTION FOR LEAVE TO  
PROCEED IN FORMA  
PAUPERIS ON APPEAL**

DANIEL PETER MORRIS

LUCILLE AROSA MORRIS

(List the full name(s) of the defendant(s)/respondent(s).)

I move under Federal Rule of Appellate Procedure 24(a)(1) for leave to proceed *in forma pauperis* on appeal. This motion is supported by the attached affidavit.

10/6/14

Dated

David H. Zimmer

Signature

DAVID H. ZIMMER

Name (Last, First, MI)

96 LINWOOD PLAZA; 208; FORT LEE, NJ 07024

Address

City

State

Zip Code

917488-5377

Telephone Number

E-mail Address (if available)

**Application to Appeal In Forma Pauperis**Zimmer v. Morris

Appeal No. \_\_\_\_\_

District Court or Agency No. \_\_\_\_\_

**Affidavit in Support of Motion**

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: **Instructions**

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date: 10/6/14My issues on appeal are: (required):

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 0	\$ N/A	\$ 0	\$ N/A
Self-employment	\$ 2000	\$ N/A	\$ 0	\$ N/A
Income from real property (such as rental income)	\$ 0	\$ N/A	\$ 0	\$ N/A



Interest and dividends	\$ 0	\$ N/A	\$ 0	\$ N/A
Gifts	\$ 0	\$ N/A	\$ 0	\$ N/A
Alimony	\$ 0	\$ N/A	\$ 0	\$ N/A
Child support	\$ 0	\$ N/A	\$ 0	\$ N/A
Retirement (such as social security, pensions, annuities, insurance)	\$ 0	\$ N/A	\$ 0	\$ N/A
Disability (such as social security, insurance payments)	\$ 0	\$ N/A	\$ 0	\$ N/A
Unemployment payments	\$ 0	\$ N/A	\$ 0	\$ N/A
Public-assistance (such as welfare)	\$ 0	\$ N/A	\$ 0	\$ N/A
Other (specify):	\$ 0	\$ N/A	\$ 0	\$ N/A
<b>Total monthly income:</b>	\$ 2000	\$ 0 N/A	\$ 0 0	\$ 0 N/A

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
Self	96 LINWOOD PLAZA; 208 FORD LEE, NJ 07024	ANNUE	\$ 2000
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
N/A			\$
			\$
			\$



4. How much cash do you ~~and your spouse~~ have? \$ 113

*Below, state any money you or your spouse have in bank accounts or in any other financial institution.*

Financial Institution	Type of Account	Amount you have	Amount your spouse has
WELLS FARGO	CHECKING	\$ 113	\$ N/A
		\$	\$
		\$	\$

*If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.*

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home <u>NONE</u>	Other real estate <u>NONE</u>	Motor vehicle #1 <u>NONE</u>
(Value) \$	(Value) \$	(Value) \$
		Make and year:
		Model:
		Registration #:

Motor vehicle #2	Other assets	Other assets
(Value) \$	(Value) \$	(Value) \$
Make and year:		
Model:		
Registration #:		

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
NONE	\$	\$
	\$	\$
	\$	\$
	\$	\$

7. State the persons who rely on you or your spouse for support.

Name [or, if a minor (i.e., underage), initials only]	Relationship	Age
ELEANOR ZIMMER	MOTHER	85

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (including lot rented for mobile home)	\$ 1250	\$ N/A
Are real estate taxes included? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 250	\$ N/A
Home maintenance (repairs and upkeep)	\$ 50	\$ N/A
Food	\$ 300	\$ N/A
Clothing	\$ 25	\$ N/A
Laundry and dry-cleaning	\$ 0	\$ N/A
Medical and dental expenses	\$ 0	\$ N/A

Transportation (not including motor vehicle payments)	\$ 100	\$ N/A
Recreation, entertainment, newspapers, magazines, etc.	\$ 0	\$ N/A
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	\$ 0	\$ N/A
Life:	\$ 0	\$ N/A
Health:	\$ 0	\$ N/A
Motor vehicle:	\$ 0	\$ N/A
Other:	\$ 0	\$ N/A
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$ 0	\$ N/A
Installment payments		
Motor Vehicle:	\$ 0	\$ N/A
Credit card (name):	\$ 250	\$ N/A
Department store (name):	\$ 0	\$ N/A
Other:	\$ 0	\$ N/A
Alimony, maintenance, and support paid to others	\$ 0	\$ N/A
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 500	\$ N/A
Other (specify):	\$ 0	\$ N/A
<b>Total monthly expenses:</b>	<b>\$ 2725</b>	<b>\$ 0 N/A</b>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes

☒ No

If yes, describe on an attached sheet.

10. Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit? ☐ Yes ☒ No

If yes, how much? \$ \_\_\_\_\_

11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

NO MONEY. OWE SIX MONTHS OF  
BACK RENT; NET WORTH VERY, VERY NEGATIVE.

12. *Identify the city and state of your legal residence.*

City FORT LEE State NJ

Your daytime phone number: 917-488-5377

Your age: 59 Your years of schooling: 9

Last four digits of your social-security number: 4350

## UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

CAPTION:

MORRIS v.Zimmer

## CERTIFICATE OF SERVICE

Docket Number: 14-3042

I, David Zimmer, hereby certify under penalty of perjury that on  
 (name)  
10/6/14, I served a copy of PROOF OF SERVICE  
 (date)  
Notice of Appeal  
 (list all documents)

by (select all applicable)\*

- ☒ United States Mail  
☐ Federal Express  
☐ Overnight Mail  
☐ Facsimile  
☐ E-mail  
☐ Hand delivery

on the following parties (complete all information and add additional pages as necessary):

DAN MORRIS P.O. Box 1165 White Plains, NY 10602  
 Name Address City State Zip Code

Lucille Morris P.O. Box 1165 White Plains, NY 10602  
 Name Address City State Zip Code

Name Address City State Zip Code

Name Address City State Zip Code

10/6/14  
 Today's Date

[Signature]  
 Signature

\*If different methods of service have been used on different parties, please indicate on a separate page, the type of service used for each respective party.

Certificate of Service Form

United States Court of Appeals for the Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007



ROBERT A. KATZMANN  
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE  
CLERK OF COURT

Date: September 16, 2014  
Docket #: 14-3042  
Short Title: Morris v. Zimmer

DC Docket #: 10-cv-4146  
DC Court: SDNY (WHITE PLAINS)  
DC Judge: Smith  
DC Judge: Briccetti

**NOTICE OF DEFECTIVE FILING**

On September 9, 2014 the Acknowledgment and Notice of Appearance was submitted in the above referenced case.

The document does not comply with the FRAP or the Court's Local Rules for the following reason(s):

- ☐ Failure to submit acknowledgment and notice of appearance (*Local Rule 12.3*)
- ☐ Failure to file the Record on Appeal (*FRAP 10, FRAP 11*)
- ☐ Missing motion information statement (*T-1080 - Local Rule 27.1*)
- ☐ Missing supporting papers for motion (e.g. affidavit/affirmation/declaration) (*FRAP 27*)
- ☐ Insufficient number of copies (*Local Rules: 21.1, 27.1, 30.1, 31.1*)
- ☐ Improper proof of service (*FRAP 25*)
- ☒ **Missing proof of service**
  - ☐ Served to an incorrect address
  - ☐ Incomplete service (*Anders v. California 386 U.S. 738 (1967)*)
- ☐ Failure to submit document in digital format (*Local Rule 25.1*)
- ☐ Not Text-Searchable (*Local Rule 25.1, Interim Local Rules 25.2*), click [here](#) for instructions on how to make PDFs text searchable
- ☐ Failure to file appendix on CD-ROM (*Local Rule 25.1, Interim Local Rules 25.2*)
- ☐ Failure to file special appendix (*Local Rule 32.1*)
- ☐ Defective cover (*FRAP 32*)
  - ☐ Incorrect caption (*FRAP 32*)
  - ☐ Wrong color cover (*FRAP 32*)
  - ☐ Docket number font too small (*Local Rule 32.1*)
- ☐ Incorrect pagination, click [here](#) for instructions on how to paginate PDFs (*Local Rule 32.1*)
- ☐ Incorrect font (*FRAP 32*)
- ☐ Oversized filing (*FRAP 27 (motion), FRAP 32 (brief)*)
- ☐ Missing Amicus Curiae filing or motion (*Local Rule 29.1*)
- ☐ Untimely filing

RECEIVED  
2014 OCT -8 PM 4:14  
U.S. COURT OF APPEALS  
SECOND CIRCUIT

\_\_\_\_ Incorrect Filing Event

X **Other: You must serve a copy of your Acknowledgment and Notice of Appearance on opposing counsel Daniel Peter Morris and the opposing party Lucille Aiosa Morris at P.O. Box 1165, White Plains, NY 10602. Also, fill out the Certificate of Service (enclosed) and return it to our Court.**

Please cure the defect(s) and resubmit the document, with the required copies if necessary, no later than **October 7, 2014**. The resubmitted documents, if compliant with FRAP and the Local Rules, will be deemed timely filed.

Failure to cure the defect(s) by the date set forth above will result in the document being stricken. An appellant's failure to cure a defective filing may result in the dismissal of the appeal.

Inquiries regarding this case may be directed to 212-857-8577.



**David H. Zimmer**

96 Linwood Plaza; Suite 208  
Fort Lee, New Jersey 07024  
(917) 488-5377  
[dzimmer@aaronmorgangroup.com](mailto:dzimmer@aaronmorgangroup.com)

July 3, 2014

Honorable Vincent L. Briccetti  
United States District Judge  
300 Quarropas Street  
White Plains, New York 10601-4150

RE: Case No 10-CV-4146 - Morris v. Zimmer

Judge Briccetti,

Thank you in advance for your consideration of the contents of this letter.

I'm not even sure if what I set forth herein is possible but I would rather be safe than sorry.

The purpose of this letter is to submit what amounts to a contingent appeal. What I mean by that is simple; in the event that Morris files an appeal this letter will stand as my request of an appeal.

Should Morris not file an appeal then my request for an appeal is moot.

Looking forward to being done but after being papered with more than 10,000 sheets of printed material one never knows.

My best to all as always and trust the holiday weekend was a good one.

Very truly yours,

David H. Zimmer

cc: Dan Morris

*Heed Wong Court*



This envelope is made from post-consumer waste. Please recycle - again.

# PRIORITY<sup>®</sup> ★ MAIL ★

- DATE OF DELIVERY SPECIFIED \*
  - USPS TRACKING<sup>™</sup> INCLUDED \*
  - INSURANCE INCLUDED \*
  - PICKUP AVAILABLE
- \* Domestic only

WHEN USED INTERNATIONALLY,  
A CUSTOMS DECLARATION  
LABEL MAY BE REQUIRED.



USPS TRACKING #



9114 9999 4423 8525 1264 56

USPS TRACKING # **9114 9999 4423 8525 1264 56**  
& CUSTOMER RECEIPT LABEL (ROLL)  
For Tracking or Inquiries go to USPS.com  
or call 1-800-222-1811.

July 2013  
2.5 x 9.5

VISIT US AT USPS.COM<sup>®</sup>  
ORDER FREE SUPPLIES ONLINE



POSTAL SERVICE



1021

10007

\$0.15  
00069254



FROM:  
ZIMMER  
96 LINWOOD PLAZA  
FAR LEE, NJ 07024

USM40LD  
SDNY

TO: US COURT /APPEALS 2ND  
THURGOOD MARSHALL COURTHOUSE  
40 FOLLEY SQUARE  
NEW YORK, NY 10007

attn: Clerk

This packaging is the property of the U.S. Postal Service<sup>®</sup> and is provided solely for use in sending Priority Mail<sup>®</sup> shipments. Misuse may be a violation of federal law. This packaging is not for resale. EP14F © U.S. Postal Service, July 2013. All rights reserved.

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
OFFICE OF THE CLERK  
THURGOOD MARSHALL COURTHOUSE  
40 CENTRE STREET- ROOM 150  
NEW YORK, N.Y. 10007  
212 857-8500**

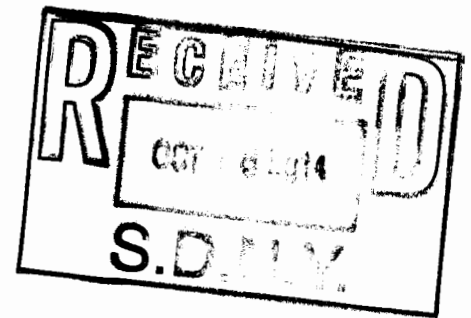
ROBERT A. KATZMANN  
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE  
CLERK

October 27, 2014

**SOUTHERN DISTRICT OF NEW YORK  
UNITED STATES COURTHOUSE  
Clerk's Office  
500 Pearl Street  
New York, NY 10007  
Attn: Pro Se Appeals**

**Re: Morris v. Zimmer  
Dkt. No: 10-cv-4146**




Dear Appeals Clerk:

The enclosed are Pro se NOA papers which was first received in our court on October 8, 2014 and mistakenly sent to the U.S. Court of Appeals.

In accordance with **Rule 4(d) of the Federal Rules of Appellate Procedure**, I have noted thereon the date it was received, and transmit it to you for filing. In the event that this notice of appeal was also filed directly with you, it need not be filed again.

CATHERINE O'HAGAN WOLFE,  
Clerk of the Court

By:   
Richard Alcantara  
Administrative Manager

Enc

cc: David Howard Zimmer